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June 11, 2002

OFFICE OF THE
EXECUTIVE SECRETARY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

Re: *In the Matter of Petition Of Tennessee UNE-P Coalition To
Open Contested Case Proceeding To Declare Unbundled
Switching An Unrestricted Unbundled Network Element*

Docket No. 02-00207

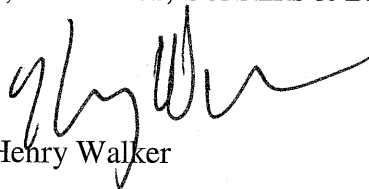
Dear David:

Enclosed herewith are the original and thirteen copies of the *UNE-P Coalition's Motion to Compel Responses to First Data Request to BellSouth Telecommunications, Inc. and Memorandum in Support* to be filed in the above captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



Henry Walker

HW/nl
c: Guy Hicks, Esq.
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

Re: *Petition of UNE-P Coalition to Open*)
Contested Case Proceeding to Declare)
Unbundled Switching an Unrestricted)
Unbundled Network Element)

Docket No. 02-00207

**UNE-P COALITION'S MOTION TO COMPEL RESPONSES
TO FIRST DATA REQUEST TO
BELL SOUTH TELECOMMUNICATIONS, INC.
AND MEMORANDUM IN SUPPORT**

The UNE-P Coalition moves for an order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to requests 1, 3 and 5-14 in the UNE-P Coalition's First Data Requests. BellSouth should be required to respond to requests 1 and 3 in the requested format rather than by simply producing all of its allegedly responsive business records. In addition, because the information sought in requests 5-14 is relevant and discoverable, BellSouth's objections to these requests should be overruled.

BellSouth Must Answer Interrogatories 1.a., 1.b., 3.a. and 3.b. in the Requested Format Rather than Produce Business Records

Data Request Nos. 1.a. and 1.b. seek information regarding the number of loops provided to requesting carriers via resale and unbundling, while Data Request Nos. 3.a. and 3.b. seek information regarding the distribution of BellSouth business customers by number of lines. While BellSouth does not object to these requests on relevancy or other substantive grounds, BellSouth does, however, object to the format of the requests.

As a preliminary matter, the grounds for BellSouth's objections to requests 1.a., 1.b., 3.a. and 3.b. are unclear. BellSouth objects to these requests "to the extent that [they] seek to

require BellSouth to provide any information in any format other than the format in which BellSouth maintains such information in the ordinary course of business.” It is unclear whether BellSouth (1) is objecting to the UNE-P Coalition’s request that the information be provided in electronic spreadsheet form rather than in some other form or (2) is contemplating answering the request simply by producing the allegedly responsive business records.

Assuming that BellSouth is contemplating answering the requests by producing business records, BellSouth should be overruled. The subject requests are clearly in the nature of interrogatories. Tenn. R. Civ. P. 33.03 permits parties to answer interrogatories via business records rather than in writing, if, and only if, certain conditions are satisfied. Rule 33.03 is not intended to allow parties to refuse to answer interrogatories in writing whenever they feel that it would be more convenient to simply produce business records. Rather, Rule 33.03 is intended to “permit the more equitable apportionment of the burden of examining voluminous records.” Tenn. R. Civ. P. 33.03 Advisory Commission comments. BellSouth has not demonstrated or even alleged that responding to requests 1 and 3 would be unduly burdensome and would require that it examine numerous documents.

In order to avail itself of Rule 33.03, BellSouth must make three showings. First, BellSouth must demonstrate that a review of the business records will answer the requests. Second, BellSouth must adequately and precisely specify the documents where the information will be found. Finally, BellSouth must demonstrate that it would be no more burdensome for the UNE-P Coalition to go through the documents than for BellSouth.

BellSouth has made no attempt to make any of these showings and indeed does not even acknowledge their existence. Thus, the exception provided for in Rule 33.03 should not be made available to BellSouth.

If BellSouth's objection is to providing the requested information in electronic spreadsheet form rather than in some other form, the Tennessee Regulatory Authority ("TRA") should require BellSouth to provide the information in electronic spreadsheet form. Providing the information in electronic spreadsheet form is most convenient to the UNE-P Coalition and ultimately to the TRA as it will allow the UNE-P Coalition and the TRA the most flexibility when working with the data. Moreover, it should not be any more difficult to provide the requested data in electronic spreadsheet form than any other form.

Finally, BellSouth's objection to data request Nos. 3.a. and 3.b. to the extent that "it purports to require BellSouth to produce information at any level of detail that differs from the level of detail at which BellSouth maintains such information in the ordinary course of its business" is unavailing. It is well established under federal law that if interrogatories are relevant, the fact that they involve work, research, and expense is not sufficient to render them objectionable.¹ *U.S. v. Nysco Labs., Inc.*, 26 F.R.D. 159 (D.C.N.Y. 1960). The question is whether doing the work is unduly burdensome. Tenn. R. Civ. P. 26.02(1)(iii). BellSouth has made no attempt to demonstrate that producing the information on the level requested by the UNE-P Coalition is unduly burdensome.

Data Requests Nos. 5 To 9 Which Seek Information On The "Bellsouth Connect And Grow Promotion" Are Relevant

BellSouth uniformly objects to the UNE-P Coalition's requests regarding the "BellSouth Connect and Grow Promotion" on the grounds that the requests are "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding."

¹ Tennessee courts have found that federal cases reviewing the Federal Rules of Civil Procedure are persuasive authority when resolving issues regarding the Tennessee Rules of Civil Procedure. *See, e.g., Henderson v. Bush Brothers & Co.*, 868 S.W.2d 236 (Tenn. 1993).

BellSouth is simply wrong. The UNE-P Coalition suspects that the promotion is designed to encourage small businesses that currently subscribe to one to three lines to subscribe to four lines in order to insulate BellSouth from competition from UNE-P providers. If the UNE-P Coalition is correct, the "BellSouth Connect and Grow Promotion" demonstrates one important way in which limiting the availability of UNE-P in the Nashville MSA to end users with one to three lines distorts competition. Data requests 5 through 9 are designed to obtain the details of the "BellSouth Connect and Grow Promotion" and to ascertain BellSouth's motives for offering the promotion.

Request No. 10 Regarding The Identity Of CLEC Switches In The Nashville MSA Is Appropriate

BellSouth objects to identifying CLEC switches in the Nashville MSA on the grounds that the UNE-P Coalition can obtain the information directly from CLECs using procedural devices that are more convenient, less burdensome, or less expensive. BellSouth offers no information which supports its position regarding the relative burden and expense of obtaining the information directly from CLECs as compared to from BellSouth. This alone is sufficient grounds for disposing of BellSouth's objection. 8A *Charles Alan Wright & Arthur R. Miller, Federal Practice And Procedure* § 2173 at 291-293 (2d Ed. 1994) ("It has long been recognized in the cases that objections should be specific and be supported by a detailed explanation of why an interrogatory or class of interrogatories is objectionable. The burden is on the objecting party to show why an interrogatory is improper").

It should not be a surprise that BellSouth made no attempt to justify its position regarding the relative burden and expense of obtaining information on CLEC switches since it is clearly more efficient to obtain the information directly from one carrier, in this case BellSouth, than from the dozens of certificated CLECs in Tennessee. The UNE-P Coalition does not have

information regarding the identity of all CLECs that have switches in the Nashville MSA. Thus, in order for the UNE-P Coalition to obtain the information it seeks it would have to serve discovery on every single certificated CLEC in Tennessee. This would be incredibly burdensome for the UNE-P Coalition and the TRA.

Data Requests 11 To 13 Which Seek Information Regarding Hot-Cuts Are Relevant

BellSouth objects to Data Request Nos. 11 to 13 which seek information on the hot-cut process on the grounds that the information sought by these requests are "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding." However, the problems with and the costs of the hot-cut process are one of the reasons why the UNE-P Coalition's members are impaired in serving customers with their own switches unless the customers are served with at least a DS-1. In other words, the inefficiency of the hot-cut process is, at least in part, why CLECs need UNE-P to serve customers with analog voice lines. Thus, the inefficiency of the hot-cut process is a critical issue in this proceeding and BellSouth should be compelled to answer the data requests that address this issue.

Data Request No. 14 Seeks Relevant Information On BellSouth's Churn Rates

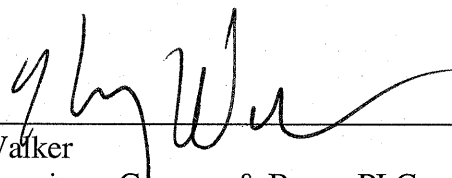
BellSouth objects to Data Request No. 14 on the grounds that it seeks information that is "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding." Churn rates, however, are one of the primary factors that determine the profitability of serving customers with a CLEC's own switch. A high churn rate means that a CLEC will be forced to amortize the costs associated with the hot-cut process over a shorter period of time, thus making serving a customer with one's own switch less profitable or unprofitable. The UNE-P Coalition seeks data on churn rates to demonstrate that serving

customers with one's own switch with DS-Os is unprofitable. The UNE-P Coalition's attempt to obtain information regarding the profitability to CLECs of serving customers with their own switch can hardly be characterized as irrelevant to this proceeding.

CONCLUSION

BellSouth's objections to requests 1, 3, 5-14 do not withstand scrutiny. Accordingly, the UNE-P Coalition respectfully requests that the TRA direct BellSouth to provide complete responses, in the requested format, to all of these questions.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'H. Walker', is written over a horizontal line.

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Nashville, Tennessee 37219
(615) 252-2363

Counsel for the UNE-P Coalition

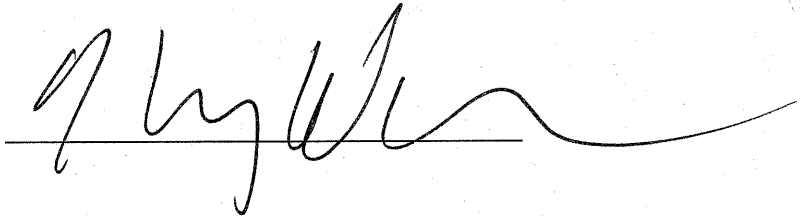
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 11th day of June, 2002.

Joelle Phillips, Esq.
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A handwritten signature in black ink, appearing to read "Andrew Isar", is written over a horizontal line.